

REMARKS

Applicant respectfully requests reconsideration and allowance of claims 1 and 6-16 and 18-22, and 24-26 that are pending in the above-identified patent application. By the foregoing amendment, Applicant has amended claims 1, 16, 21, 22 and 24 herein. Claim 23 is has been canceled in this response. No new matter is added by the amendment. In view of the following discussion, Applicant submits that all pending claims are in condition for allowance.

In addition, the undersigned thanks Examiner Douglas for the courtesies that he extended during the telephone interview of May 12, 2010 wherein merits of the claims over the cited art were discussed. The Examiner conveyed that the claims as amended herein overcome current rejections.

I. Objection to the Drawings:

On page 2 of the subject Office Action, the drawings are objected to as allegedly failing to show a capsule having ribs with sharp edges, soft undulating transitions or in the form of pins. In response to this objection, applicant submits a new drawing sheets with Figs. 14a-c and Fig. 15. Fig. 14a shows a transverse cross sectional view of a capsule having ribs in the form of pins, Fig. 14b shows a capsule with sharp edges and Fig. 14c shows a capsule having ribs with soft undulating transitions. Fig. 15 shows an inhaler capsule comprising longitudinal ribs on the outer contour. Support for these new drawings can be found in the specification as filed at least at page 8 lines 10-20.

II. Rejection of Claims 1, 6-13, 16 and 18-26 under 35 U.S.C. §102(b):

At page 3 of the Office Action, the Examiner rejected claims 1, 6-13, 16, and 18-26 under 35 U.S.C. §102(b) as being anticipated by Ohki et al. (U.S. 5,715,811). In view of the amendments herein, Applicant respectfully traverses the rejection.

Amended independent claim 1 recites, in part, “wherein features comprising a plurality of longitudinal ribs forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis”.

Independent claim 16 recites: “features comprising a plurality of longitudinal ribs forming an

outer contour are symmetrical with respect to a transverse plane that bisects the longitudinal axis “.

Independent claim 21 recites:” wherein features comprising a plurality of longitudinal ribs forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis”.

Applicant submits that Ohki does not disclose or suggest such aspects.

Ohki *et al.* relates to an inhaling piece formed with an inhaling mouth 3 and a holder accommodating section 2. The capsule holder 7 is formed with a capsule accommodating hole 7 and airflow passages 8 which extend axially. (*See* Ohki *et al.* Abstract). Ohki *et al.* generally discloses capsule 17 in Fig. 7 for example, to be inserted into the capsule holder. On page 3 of the subject Office Action the Examiner contends that even the smallest structures within the seam would constitute a plurality of elevations. However, it is submitted that even if the seam of the capsule 17 comprises a plurality of elevations (which the applicant does not concede), such elevations would be in the transverse plane and hence they would not constitute longitudinal ribs as recited in amended independent claims 1, 16, 21 and illustrated in new Figure 15 of applicant's drawings. The claimed longitudinal ribs facilitate guiding the capsule in the capsule chamber without any great frictional losses during its axial movement. (*See*, applicant's disclosure as filed page 8 lines 27-28). Ohki *et al.* neither discloses nor suggests such aspects. Hence, it is concluded that Ohki *et al.* is silent regarding such claimed aspects.

In view of the above, claims 1, 16, and 21 are patentable. As claims 6-13, 18-20, 22 and 24 - 26 depend from claims 1, 16, and 18 respectively, and recite additional patentable features, the subject dependent claims are, therefore, likewise patentable.

III. Rejection of Claims 1, 6-16 and 18-26 under 35 U.S.C. §102(b):

At page 4 of the Office Action, the Examiner rejected claims 1, 6-16, and 18-26 under 35 U.S.C. §102(b) as being anticipated by Hochrainer *et al.* (U.S. 5,947,118). In view of the amendments herein, Applicant respectfully traverses the rejection.

The requirements of claims 1, 16, and 21 are discussed above. Applicant submits that Hochrainer does not disclose or suggest features comprising a plurality of longitudinal ribs forming

an outer contour of the capsule which are symmetrical with respect to a transverse plane which bisects the longitudinal axis as recited in independent claim 21 and similarly in other independent claims. Hochrainer et al. discloses a capsule holder for insertion and fixing of pharmaceutical capsules consisting of a plate (2) with a recess (1) in which there are at least three ribs arranged parallel to the central axis and at unequal spacings from one another between which the capsules can be clamped both by their upper part and by their lower part in such a way that they do not fall out during normal handling but can be readily removed. (*See* Hochrainer et al. Abstract). Thus, while Hochrainer et al. discloses a capsule holder having a recess with ribs, it does not teach or suggest features comprising a plurality of longitudinal ribs forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis capsule as recited in independent claims 1, 16 and 21. The claimed longitudinal ribs facilitate guiding the capsule in the capsule chamber without any great frictional losses during its axial movement. (*See*, applicant's disclosure as filed page 8 lines 27-28).

In view of at least the aforementioned, it can be concluded that Hochrainer et al. does not disclose an identical invention as recited in the subject claims. Hence, this rejection should be withdrawn with respect to claims 1, 16, 21 and all claims depending therefrom.

IV. Rejection of Claims 1, 6-13, 16 and 18-26 under 35 U.S.C. §103(a):

At page 6 of the Office Action, the Examiner has rejected: claims 1, 6-13, 16, and 18-26 under 35 U.S.C. §103(a) as being unpatentable over Ohki (U.S. 5,715,811). In view of the amendments herein, Applicant respectfully traverses the rejection.

The aforementioned deficiencies of Ohki are not overcome under a §103 analysis. Indeed, to arrive at the present invention as claimed one would need to imbue the Ohki capsule with structure that simply does not exist. This would clearly be improper. For example, Ohki et al. does not teach or suggest a capsule "wherein features comprising a plurality of longitudinal ribs forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis" as recited in independent claims 1, 16 and 21.

In view of the above, the teachings of Ohki do not suggest the present invention as recited in claims 1, 16, and 21, and claims 1, 16, and 21 are, therefore, patentable. As claims 4-15, 18-20, 22

and 24-26 depend from claims 1 16, and 21 respectively, and recite additional patentable features, the subject dependent claims are, therefore, patentable.

Accordingly, Applicant respectfully requests that the Examiner's §103 claim rejection over Ohki et al. be withdrawn.

V. Rejection of Claims 1, 6-16 and 18-26 under 35 U.S.C. §103(a):

At page 7 of the Office Action, the Examiner has rejected: claims 1, 6-16, and 18-26 under 35 U.S.C. §103(a) in view of Hochrainer et al. (U.S. 5,947,118). Applicant respectfully traverses the rejection and requests withdrawal of the rejection for at least the following reasons.

As mentioned *supra*, Hochrainer et al. relates to a capsule holder for inserting and fixing pharmaceutical capsules but does not teach or suggest a capsule "wherein features comprising a plurality of longitudinal ribs forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis" as recited in independent claims 1, 16 and 21.

As claims 4-15, 18-20, 22 and 24-26 depend from claims 1, 16, and 21 respectively, and recite additional patentable features, the subject dependent claims are, therefore, patentable. Accordingly, Applicant respectfully requests withdrawal of this §103 rejection over Hochrainer et al.

Conclusion:

In view of the foregoing, Applicant submits that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

Respectfully submitted,

Dated: May 18, 2010

s/Bhavani S. Rayaprolu/
Bhavani S. Rayaprolu
Agent for Applicant(s)
Reg. No. 56,583

Gibson & Dernier LLP
900 Route 9 North, Suite 504
Woodbridge, NJ 07095
Tel: (732)634-7634
Fax: (732)634-6887

Patent Department
Boehringer Ingelheim Corp.
900 Ridgebury Road
P.O. Box 368
Ridgefield, CT 06877
Tel.: (203) 798-9988